

Decision **PROPOSED DECISION OF ALJ MINKIN** (Mailed 3/14/2013)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project.	Application 10-07-001 (Filed July 6, 2010)
---	---

**DECISION ON REQUEST FOR INTERVENOR COMPENSATION
FOR CENTER FOR BIOLOGICAL DIVERSITY**

Claimant: Center for Biological Diversity	For contribution to Decision (D.) 11-07-036 and D.12-05-022
Claimed (\$): \$53,286.34	Awarded (\$): \$45,408.58 (reduced 14.7%)
Assigned Commissioner: Michel Peter Florio	Assigned ALJ: Angela K. Minkin

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: D.11-07-036, among other things, required The Nevada Hydro Company (Nevada Hydro) to post a performance or surety bond to ensure that eligible intervenors who complied with Commission requirements would receive appropriate compensation, whether or not a certificate of public convenience and necessity was issued.

D.12-05-022 dismissed Nevada Hydro's application and imposed a series of requirements and conditions that must be met if the Commission were to consider an application for this project (or similar projects) in the future.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	Phase 1: 9/22/10 Phase 2: 11/10/11	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	10/20/10; amended NOI filed 2/3/11	Correct
4. Was the notice of intent timely filed?		Yes, the amended NOI was filed within 15 days after the issuance of the Phase 1 Scoping Memo Ruling (Rule 17.1(b)).
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	Application (A.) 10-07-001	Correct
6. Date of ALJ ruling:	11/23/10	Correct
7. Based on another CPUC determination (specify):		A.09-05-027
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.10-07-001	
10. Date of ALJ ruling:	11/23/10	
11. Based on another CPUC determination (specify):		A.09-05-027
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		

13. Identify Final Decision	D.12-05-022	
14. Date of Issuance of Final Decision:	5/30/12	
15. File date of compensation request:	7/27/12, supplemented 9/10/12	
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant's contribution to the final decision
(see § 1802(i), § 1803(a) & D.98-04-059)

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. The need to analyze both Talega-Escondido/Valley-Serrano Transmission Line and Lake Elsinore Advanced Pumped Storage (LEAPS) in a single environmental assessment under the California Environmental Quality Act (CEQA) assessment because of the need to analyze the whole of the interrelated projects and the contracts by the applicant to own power generated by LEAPS.	<ul style="list-style-type: none"> • D.11-07-036 (08/05/2011) at 7, 10. • Prehearing Conference Statement (9-21-10) at 7-8. • Brief on Threshold Issues (11/19/12) at 2-5. 	Correct
2. The requirement for and adequacy of posting a bond for intervenor compensation if the applicant is not a public utility.	<ul style="list-style-type: none"> • D.11-07-036 (08/05/2011) at 12, 14, 17-19. • D.12-05-022 (05/30/2012) at 3-4, 13, 15-16, 22. • Motion for Comments on Phase 1 Scoping Memo Ruling, Attachment 1 (3/22/11) at 3-4.¹ • Brief on Threshold Issues (11/19/12) at 5-7. • Joint Prehearing Conference Statement (11/9/11) at 7-8. • Joint Response To Petition for Modification (12-9-11) at 1-11. 	Correct
3. A technical workshop should be convened before any new application is	<ul style="list-style-type: none"> • D.12-05-022 (05/30/2012) at 12, 21. 	Correct

¹ Motion granted April 25, 2011 Ruling.

filed.	<ul style="list-style-type: none"> Joint Prehearing Conference Statement (11/9/11) at 4. 	
4. The application is not complete and is vague and speculative as to the project.	<ul style="list-style-type: none"> D.12-05-022 (05/30/2012) at 10, 19. Joint Protest at (7/30/10) at 2-3, 9-11. Prehearing Conference Statement (9-21-10) at 6-7, 9-11. Joint Prehearing Conference Statement (11/9/11) at 5. Joint Comments on Dismissing Application (12/16/11) at 3, 9-11. 	Correct
5. The financial wherewithal of the applicant to proceed with the project is not readily apparent and the financing is vague and speculative.	<ul style="list-style-type: none"> D.12-05-022 (05/30/2012) at 10, 19. Joint Protest at (7/30/10) at 2-3, 5-9. Prehearing Conference Statement (9-21-10) at 3-6. Joint Prehearing Conference Statement (11/9/11) at 5-6. Joint Comments on Dismissing Application (12/16/11) at 3-7. 	Correct
6. Any subsequent application must meet the following specific requirements listed, in part, below:	6: <ul style="list-style-type: none"> D.12-05-022 (05/30/2012) at 11-12, 20-21, 23-24. Joint Comments on Dismissing Application (12/16/11) at 14. 	Correct
6.1. Demonstrating that A.10-07-001 lacks the following detail which must be provided prior to any future application. To be considered complete, any application must comply fully with the requirements of Pub. Util. Code §§ 1001, General Order 131, the Rules of Practice and Procedure, must fully demonstrate the proposed project's need, and must comply with the detailed requirements to provide a cost plan, implementation plan, and project management plan;	6.1: <ul style="list-style-type: none"> D.12-05-022 (05/30/2012) at 11, 20, 23. Joint Protest at (7/30/10) at 2-3, 6-11. Prehearing Conference Statement (9/21/10) at 3-6, 9-11. Joint Prehearing Conference Statement (11/9/11) at 5-6. Joint Comments on Dismissing Application at (12/16/11) at 3, 9-11. 	Correct
6.2 Demonstrating that A.10-07-001 lacks the following detail which must be provided prior to any future application. Any subsequent application must ensure that the financial viability of the project is	6.2: <ul style="list-style-type: none"> D.12-05-022 (05/30/2012) at 11, 20-21, 23. Joint Protest (7/30/10) at 2-3, 5-9. 	Correct

<p>clear and that any financial partner's participation is transparent, as well as the financial viability of the project and proponent's ability to support the project;</p>	<ul style="list-style-type: none"> • Prehearing Conference Statement (9-21-10) at 3-6. • Joint Prehearing Conference Statement (11/9/11) at 5-6. • Joint Comments on Dismissing Application (12/16/11) at 3-7. 	
<p>6.3 Demonstrating that A.10-07-001 lacks the following detail which must be provided prior to any future application. Any subsequent application must include complete testimony from expert witnesses;</p>	<p>6.3:</p> <ul style="list-style-type: none"> • D.12-05-022 (05/30/2012) at 11, 21, 24. • Joint Prehearing Conference Statement (11/9/11) at 6. • Joint Comments on Dismissing Application (12/16/11) at 7-8. 	<p>Correct</p>
<p>6.4 Demonstrating that A.10-07-001 lacks the following detail which must be provided prior to any future application. Any subsequent application must provide an accurate and stable project description and location and the Energy Division must not accept the PEA as complete without such a description; and</p>	<p>6.4:</p> <ul style="list-style-type: none"> • D.12-05-022 (05/30/2012) at 11-12, 21, 24. • Joint Protest at (7/30/10) at 3, 9-12. • Prehearing Conference Statement (9-21-10) at 9-11. • Joint Prehearing Conference Statement (11/9/11) at 5. • Joint Comments on Dismissing Application (12/16/11) at 9-11. 	<p>Correct</p>
<p>6.5 Demonstrating that A.10-07-001 lacks the following detail which must be provided prior to any future application. Any subsequent application must explain how the CAISO is currently considering the project and must include a full discussion of how revenue requirements will be calculated and recovered through the TAC, as well as the impact on California ratepayers.</p>	<p>6.5:</p> <ul style="list-style-type: none"> • D.12-05-022 (05/30/2012) at 12, 21, 24. • Joint Prehearing Conference Statement (11/9/11) at 6-7. 	<p>Correct</p>
<p>7. The motion to file information under seal should be denied.</p>	<ul style="list-style-type: none"> • Notice of Ruling Denying Motion to File Under Seal (9-27-10). • Prehearing Conference Statement (9-21-10) at 6-7. 	<p>Correct</p>

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Correct
c. If so, provide name of other parties: Santa Ana Mountains Task Force of the Sierra Club, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau, FRONTLINES, John Pecora, Linda Lou and Martin Rindenour, Friesian Focus LLC, The Fernandez Trust, and Joseph and Joan Fernandez.		Correct
<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>The Center for Biological Diversity communicated with DRA to understand the issues they would be raising during the proceeding and coordinate on issues raised.</p> <p>The Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau held repeated coordination meetings and coordinated to submit joint filings on many occasions where interests coincided such as the Protest (filed July 30, 2010), Joint Prehearing Conference Statement (filed Nov. 9, 2011), Joint Response to the Petition to Modify Decision (filed Dec. 9, 2011), and Joint Comments (filed Dec. 16, 2011).</p> <p>The Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau, FRONTLINES, John Pecora, and counsel for Friesian Focus LLC, The Fernandez Trust, and Joseph and Joan Fernandez communicated via email and held coordinating conference calls or meetings to discuss issues in the proceeding and coordinate on matters raised during the proceeding.</p> <p>The Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau held coordination meetings and communicated to increase the efficiency of the claim for intervenor compensation for our separate organizations.</p> <p>The Center for Biological Diversity communicated with Ms Ridenour to understand and convey her concerns on certain matters during the proceeding where she did not participate.</p> <p>In other matters where there may have been duplication on certain issues the Center for Biological Diversity's arguments, analysis, factual support, and attachments supplemented, complemented, and contributed to the recommendation of another party. <i>See</i> Cal. Pub. Util. Code § 1802.5. For example, while other parties noted that the application materials were vague or incomplete the Center for Biological Diversity—while coordinating with other parties in the protest—noted in their initial protest that the application violated CPUC Rule 3.1 that other parties did not emphasize. Joint Protest at (7/30/10) at 7. In other example, other parties expressed concerns that expert</p>		<p>We agree that Center for Biological Diversity (CBD) took necessary steps to avoid duplicating the efforts of other parties and coordinated its efforts so that it supplemented, complemented or contributed to the work of the other active parties in this proceeding.</p>

witnesses were no longer available, but the Center—while coordinating with other parties in comments—provided specific detail about which witnesses were no longer available, what subjects their testimony left in doubt, and how the lack of expert testimony impacted the reliability of other expert witnesses and analysis. Joint Comments on Dismissing Application (12/16/11) at 7-8.	
--	--

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment

D. Additional Comments on Part II:

#	Claimant	CPUC	Comment

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§§ 1801 & 1806):**

Concise explanation as to how the cost of claimant's participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)	CPUC Verified
<p>Claimant submitted 7 separate comments, filings, or briefs, many with supplemental attachments, all of which provided substantial information and support for the CPUC during its decision making.</p> <p>Claimant sought to coordinate with other parties on issues to avoid duplication via email, telephonic, and in person communication to reduce unnecessary hours. Claimant further sought to avoid unnecessary and wasteful review of documentation by senior staff in order to increase efficiency. Claimant further waives hours expended by law clerk, Laura Horton, in this proceeding so as to minimize expenses.</p>	<p>After the adjustment we make to CBD's (because we are not considering contributions to decisions other than D.11-07-036 and D.12-05-022), the hours and costs claimed are reasonable and certainly contributed to the evidence in this proceeding that resulted in dismissal of the application, and thus, savings for ratepayers.</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Jonathan Evans, attorney	2008	5.2	\$205	Resolution ALJ-267 (see Attachment 2)	\$1,066	0	0	0
Jonathan Evans	2009	2.9	\$225	D1110041	\$652.50	0	0	0
Jonathan Evans	2010	46.7	\$235	D1110041	\$10,974.50	46.7	235	\$10,974.5
Jonathan Evans	2011	80.3	\$280	D1110041	\$22,484.00	79.8	280	\$22,344
Jonathan Evans	2012	2.3	\$295	Resolution ALJ-267 (see Attachment 2)	\$678.50	2.3	300	\$690
John Buse, attorney	2007	9.3	\$450	Resolution ALJ-267 (see Attachment 2)	\$4,185	0	0	0
John Buse	2010	1.5	\$460	Resolution ALJ-267 (see Attachment 2)	\$690	1.5	425	\$637.50
John Buse	2011	.2	\$465	Resolution ALJ-267 (see Attachment 2)	\$93.00	.2	445	\$89.00
Aruna Prabhala, attorney	2011	24.5	\$175	Resolution ALJ-267 (see Attachment 2)	\$4,287.50	24.5	150	\$3,675.00
Laura Horton, law clerk	2010	waived	\$110	D0712007 adjusted per Resolution ALJ-267	\$0	waived		0
	Subtotal:				\$45,111	Subtotal:		\$38,410
OTHER FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Jonathan Evans	2011	11	\$140	Travel at ½ rate	\$1,540	11	140	\$1,540
	Subtotal:				\$1,540	Subtotal:		\$1,540
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Jonathan Evans	2010	4.2	\$117.5	½ of normal rate	\$493.50	4.2	117.5	\$493.50
Jonathan Evans	2011	2.4	\$140	½ of normal rate	\$336	2.4	140	\$336
Jonathan Evans	2012	48.2	\$147.5	½ of normal rate	\$7,109.50	30	150	\$4,500

Aruna Prabhala	2012	1.5	\$87.5	½ of normal rate	\$131.25	1.5	80	\$120
	Subtotal:				\$8,070.25	Subtotal:		\$5,449.50
COSTS								
#	Item	Detail			Amount	Amount		
4	Travel costs	Airfare, lodging, and rental car costs for travel to Lake Elsinore for the Notice of Preparation of an EIR Scoping Meeting			\$279.08	Adjusted per filing of September 12, 2012		\$279.08
i	Photocopying, mailing, telephone, on-line legal research	Costs waived			\$0			waived
Subtotal:					\$279.08	Subtotal:		\$279.08
TOTAL REQUEST \$:					\$53,286.34	TOTAL AWARD \$:		\$45,408.58
<p>* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees, paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision in making the award.</p>								
<p>**Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.</p>								

C. CPUC Adoptions, Disallowances & Adjustments (CPUC completes):

	Adoptions
2010-2012 Evans hourly rates	CBD requests an hourly rate of \$235 per hour for 2010 and \$280 per hour for 2011. These rates were awarded in D.11-10-041, appropriately reflecting Attorney Evans years of experience as an environmental advocate and practice before this Commission. CBD requests a rate of \$295 for Mr. Evans work in 2012, reflecting a 5% step increase. We accept this increase and also the hourly rate for Attorney Evans for 2012, based on the 2.2% Cost of Living Adjustment approved in Resolution ALJ-281. The hourly rate for Mr. Evans for 2012 is \$300 per hour.
2010-2011 Buse hourly rates	CBD requests \$460 per hour for Attorney Buse's work in 2010 and \$465 per hour in 2011, calculated on a base rate of \$450 per hour for work in 2007, which we disallow (see below). We adjust the hourly rate for Mr. Buse to \$425 per hour for 2010 and to \$445 per hour for 2011. Mr. Buse holds both a J.D. from UC Davis and a master's degree in biological chemistry from the University of Illinois – Chicago Medical Center. He has

	been practicing law since 1992 and is the legal director, interim general counsel, and senior attorney at CBD. We find a mid-range award more reasonable, given the relative lack of experience in practice before this Commission
2011-2012 Prabhala hourly rates	CBD requests \$175 per hour for 2011 and 2012 for Attorney Prabhala. We adjust the hourly rate for Ms. Prabhala to \$150 per hour for 2011 and to \$165 per hour for 2012. It is reasonable to award Ms. Prabhala compensation based on the starting range for attorneys with 0-2 years of experience, considering that Ms. Prabhala was admitted to the California bar in December 2011. We apply a reasonable 5% step to her work in 2012 and also apply the COLA approved in Resolution ALJ-281.
	Disallowances and Adjustments
2008 and 2009 hours for Evans; 2007 hours for Buse	We disallow hours claimed for work performed prior to 2010. While A.10-07-001 was similar to previous applications filed by The Nevada Hydro Company, namely A.07-10-005 and A.09-02-012, those decisions were dismissed by D.09-04-006, issued on April 17, 2009. Any claims for intervenor compensation related to that decision cannot be considered timely filed.
2011 hours for Evans	In addition, we deduct 0.5 hours in 2011 for reviewing work done at the Federal Energy Regulatory Commission.
Hours on compensation preparation	For both its claim and amended claim, CBD claimed 48.2 hours of Mr. Evans' time in preparation of matters related to intervenor compensation activity in 2012. This appears excessive and we adjust the hours related to intervenor compensation to 30 hours for Mr. Evans' hours, which appears more reasonable in preparing the e intervenor compensation claim and reply to Nevada Hydro's response to the claim.. We deduct 18.2 hours from Mr. Evans' 2012 hours.

PART IV: OPPOSITIONS AND COMMENTS**A. Opposition: Did any party oppose the claim (Y/N)?**

Yes

If so:

Party	Reason for Opposition	CPUC Disposition
Nevada Hydro	Nevada Hydro contends that CBD did not make a substantial contribution to the decisions issued in this proceeding, because the Commission dismissed the application and did not resolve the underlying issues. CBD filed a response to Nevada Hydro's opposition.	We deny Nevada Hydro's contention. CBD's advocacy directly contributed to the decision to dismiss this application and to require Nevada Hydro to post a bond to ensure that intervenors would be

		compensated as determined by the Commission.

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6)) (Y/N)?

No, the request is opposed and comments should be allowed.

If not:

Party	Comment	CPUC Disposition
Nevada Hydro	Nevada Hydro opposes the grant of compensation. It contends that D.12-05-022 was merely procedural and there has not been a substantive decision on the merits of the application that would justify the award. Further, Nevada Hydro maintains that the proposed compensation is excessive.	Nevada Hydro reargues its earlier opposition to the claim. There are no changes to the award in response to comments as we find that CBD made a substantial contribution to D.11-07-036 and D.12-05-022 dismissing the application.

FINDINGS OF FACT

1. The Center for Biological Diversity has made a substantial contribution to D.11-07-036 and D.12-05-022.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$45,408.58.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code Sections 1801-1812.
2. Pursuant to D.11-07-036, Nevada Hydro posted a bond in the amount of \$550,000 to ensure that eligible intervenors would be compensated.

ORDER

1. Claimant is awarded \$45,408.58.
2. Within 30 days of the effective date of this decision, The Nevada Hydro Company shall pay claimant the total award, consistent with the requirements of Decision 11-07-036 and Decision 12-05-022. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 10, 2012, the 75th day after the filing of claimant's request, and continuing until full payment is made.
3. Application 10-07-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D.11-07-036, D.12-05-022	
Proceeding(s):	A.10-07-001	
Author:	Angela K. Minkin	
Payer(s):	The Nevada Hydro Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
Center for Biological Diversity	July 27, 2012; supplemented September 10, 2012	\$53,286.34	\$45,408.58	Not applicable	Disallowance for work prior to 2010, work related to FERC, reduction of hours related to preparation of intervenor compensation claim; mid-range hourly rate for Mr. Buse; starting range for Ms. Prabhala.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Jonathan	Evans	Attorney	CBD	\$235	2010	\$235
Jonathan	Evans	Attorney	CBD	\$280	2011	\$280
Jonathan	Evans	Attorney	CBD	\$295	2012	\$300
John	Buse	Attorney	CBD	\$460	2010	\$425
John	Buse	Attorney	CBD	\$465	2011	\$445
Aruna	Prabhala	Attorney	CBD	\$175	2011	\$150

(END OF APPENDIX)